any perceived retaliation and allowing the company a reasonable opportunity to correct it before quitting and asserting a constructive discharge. (Note: If there is any chance that the decision might be made in the future to discharge the employee for making the report—e.g., if the company concludes that the allegations were not made in good faith—then this assurance probably should not be given, at least until later when (if) the company is satisfied that the employee was not acting in bad faith or otherwise improperly.)

3. The memo should contain language that conveys that the other terms of her employment—specifically, its at-will status—remains unchanged. This is to avoid any future claim that the understandings surrounding the transfer constitute a contractual obligation of some sort.

4. The new position, as we discussed, should have responsibilities and compensation comparable to her current one, to avoid any claim of constructive discharge.

5. As we discussed, to the extent practicable, the fact that she made the report should be treated as confidential.

6. The individual or individuals who are implicated by her allegations should be advised to treat the matter confidentially and to use discretion regarding any comments to or about the complaining employee. They should be advised that she is not to be treated adversely in any way for having expressed her concerns.

7. You indicated that the officer in charge of the area to which the employee may be reassigned would probably need to be advised of the circumstances. I suggest he be advised at the same time that it is important that she not be treated adversely or differently because she made the report. And that the circumstances of the transfer are confidential and should not be shared with others.

You also asked that I include in this communication a summary of the possible risks associated with discharging (or constructively discharging) employees who report allegations of improper accounting practices:

1. Texas law does not currently protect corporate whistleblowers. The supreme court has twice declined to create a cause of action for whistleblowers who are discharged; however, there were special factors present in both cases that weighed against the plaintiffs and the court implied that it might reach a different conclusion under other circumstances.

2. Regardless of the whistleblower issue, there is often a risk of a Sabine Pilot claim (i.e., allegation of discharge for refusing to participate in an illegal act). Whistleblower cases in Texas commonly are pled or repled as Sabine Pilot claims—it is often an easy leap for the plaintiff to make if she had any involvement in or duties relating to the alleged improper conduct. For example, some cases say that if an employee's duties involve recording accounting data that she knows to be misleading onto records that are eventually relied on by others in preparing reports to be submitted to a federal agency (e.g., SEC, IRS, etc.), then the employee can be subject to criminal prosecution even tho she did not originated the misleading data and does not prepare the actual document submitted to the government. Under such circumstances, if the employee alleges that she was discharged for refusing to record (or continuing the practice of recording) the allegedly misleading data, then she has stated a claim under the Sabine Pilot doctrine.

3. As we discussed, there are a myriad of problems associated with Sabine Pilot claims, regardless of their merits, that involve allegations of illegal accounting or related practices. One is that the company's accounting practices and books and records are fair game during discovery—the opposition typically will request production of volumes of sensitive material. Another problem is that because accounting practices often involve judgments in gray areas, rather than non-judgmental applications of black-letter rules, there are often genuine disputes over whether a company's practice or a specific report was materially misleading or complied with some statutory or regulatory requirements. Third, these are typically jury cases—that means they are decided by lay persons when the legal compliance issues are often confusing even to the lawyers and experts. Fourth, because of the above factors, they are very expensive and time consuming to litigate.

4. In addition to the risk of a wrongful discharge claim, there is the risk that the discharged employee will seek to convince some government oversight agency (e.g., IRS, SEC, etc.) that the corporation has engaged in materially misleading reporting or is otherwise non-compliant. As with wrongful discharge claims, this can create problems even tho the allegations have no merit whatsoever.

These are, of course, very general comments. I will be happy to discuss them in greater detail at your convenience.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 2997. Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, and Ms. MIKULSKI) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

TEXT OF AMENDMENTS

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place in the Amendment, insert the following:

SEC. . NUCLEAR POWER 2010.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) OFFICE.—The term ''Office'' means the Office of Nuclear Energy Science and Technology of the Department of Energy.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office of Nuclear Energy Science and Technology of the Department of Energy.

(4) PROGRAM.—The term ''Program'' means the Nuclear Power 2010 Program.

(b) ESTABLISHMENT.—The Secretary shall carry out a program, to be managed by the Director.

(c) PURPOSE.—The program shall aggressively pursue those activities that will result in regulatory approvals and design completion in a phased approach, with joint government/industry cost sharing, which would allow for the construction and startup of new nuclear plants in the United States by 2010.

(d) ACTIVITIES.—In carrying out the program, the Director shall—

(1) issue a solicitation to industry seeking proposals from joint venture project teams comprised of reactor vendors and power generation companies to participate in the Nuclear Power 2010 program;

(2) seek innovative business arrangements, such as consortia among designers, constructors, nuclear steam supply systems and major equipment suppliers, and plant owner/operators, with strong and common incentives to build and operate new plants in the United States;

(3) conduct the Nuclear Power 2010 program consistent with the findings of A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010 issued by the Near-Term Deployment Working Group of the Nuclear Energy Research Advisory Committee of the Department of Energy;

(4) rely upon the expertise and capabilities of the Department of Energy national laboratories and sites in the areas of advanced nuclear fuel cycles and fuels testing, giving consideration to existing lead laboratory designations and the unique capabilities and facilities available at each national laboratory and site;

(5) pursue deployment of both water-cooled and gas-cooled reactor designs on a dual track basis that will provide maximum potential for the success of both;

(6) include participation of international collaborators in research and design efforts where beneficial; and

(7) seek to accomplish the essential regulatory and technical work, both generic and design-specific, to make possible new nuclear plants within this decade.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section such sums as are necessary for fiscal year 2003 and for each fiscal year thereafter.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 417) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place insert the following:

TITLE —RURAL AND REMOTE COMMUNITY FAIRNESS ACT

SEC. 01.—This Title may be cited as the ''The Rural and Remote Community Fairness Act.''.

Subtitle A—Rural and Remote Community Development Block Grants

SEC. 02.—The Housing and Community Development Act of 1974 (Public Law 93–383) is amended by inserting at the end the following new title:

''TITLE IX—RURAL AND REMOTE COMMUNITY DEVELOPMENT BLOCK GRANTS

''SEC. 901.(a) FINDINGS.—The Congress finds and declares that—

''(1) a modern infrastructure, including energy-efficient housing, electricity, telecommunications, bulk fuel, waste water and